

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ORDER
08-CR-004S

MONTE MONTALVO,

Defendant.

1. Defendant is charged in a superseding indictment, dated October 15, 2008, with two counts of possessing a firearm between on or about October 18, 2006 and April 18, 2007 (Count 1) and April 23, 2007 and December 20, 2007 (Count 2), while subject to an order of protection, in violation of Title 18, United States Code, Sections 922(g)(8) and 924(a)(2). (Docket No. 56).

2. On March 13, 2008, this case was referred to the Honorable Jeremiah J. McCarthy, United States Magistrate Judge, for all pre-trial matters. (Docket No. 11). On February 9, 2009, Judge McCarthy filed a Report and Recommendation and Order. (Docket No. 72). In the Report and Recommendation portion, Judge McCarthy recommended that Defendant's Motion to Dismiss Indictment and Motion to Suppress Evidence (Docket No. 66) be denied.

3. Neither party has filed an objection to Judge McCarthy's Report and Recommendation nor has there been an appeal from Judge McCarthy's Order within ten days.

4. This Court has thoroughly reviewed Judge McCarthy's Report and Recommendation and Order and the applicable law. Upon due consideration, this Court

finds no legal or factual error in Judge McCarthy's Report and Recommendation and will accept the recommendation that Defendant's Motion to Dismiss the Indictment and Suppress Evidence be denied.

IT HEREBY IS ORDERED, that this Court accepts Judge McCarthy's Report and Recommendation and Order (Docket No. 72) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Defendant's Motion to Dismiss the Indictment and Motion to Suppress Evidence (Docket No. 66) is DENIED.

FURTHER, that a status conference is scheduled for March 17, 2009 at 9:00 a.m.

SO ORDERED.

Dated: March 12, 2009
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge